IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7142 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD NEW TEXTILE MILS A UNIT OF NATIONAL TEXTILE COR
Versus
MAMLATDAR

Appearance:
1. Special Civil Application No. 7142 of 2002
NANAVATI & NANAVATI for Petitioner No. 1
MR LB DABHI AGP for Respondent No. 1
MS SEJAL K MANDAVIA for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 09/07/2004

ORAL JUDGEMENT

1.1 The petitioner herein, has challenged the

impugned Recovery Notice dated 14/06/02 issued by the Mamlatdar, Alien Recovery, Ahmedabad at Annexure 'A' to the petition, whereby, it was directed to recover an amount of Rs.33,960/- along with surcharge of Rs.1,698/- with 5% - 10% interest against the properties of the petitioner - Mill.

2.1 The petitioner - a Textile Mill, is a unit of the National Textile Corporation (G) Ltd. and was carrying on activities of manufacturing textile products. The petitioner Mill was declared as a "Sick Industrial Undertaking" on 06/03/93 under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, "the S.I.C.A."). The case of the petitioner Mill being Case No.535/92 was referred before the Board for Industrial & Financial Reconstruction (for short, "the B.I.F.R.") for a Revival scheme.

3.1 It is the case of the petitioner Mill that one Mr.Vadilal Shamaldas Dave, an ex-employee of the petitioner Mill, respondent no.2 herein, who had resigned from the service of the petitioner Mill on 13/08/87 had preferred an application before the Controlling Authority under the Payment of Gratuity Act, 1972. The Controlling Authority by order dated 07/09/00 directed the petitioner Mill to pay gratuity to the ex-employee, respondent no.2 herein. The petitioner Mill due to severe financial difficulties could not comply with the said order of the Controlling Authority and informed the Authority that no recovery of outstanding amount of gratuity may be resorted to as the proceedings under the S.I.C.A. was pending before the B.I.F.R. But the Authority turned down the request of the petitioner terming the "recovery" as valid and issued the aforesaid Recovery Notice dated 14/06/02. It is this Notice which is under challenge before this Court through this petition.

4.1 While admitting the matter this Court (Coram : P. B. Majmudar, J.) had directed the petitioner to deposit the principal amount of gratuity before this Court and had made it clear that the withdrawal of the said principal amount of gratuity deposited in this Court would be subject to the final result of the petition.

5.1 In view of the fact that the Board for Industrial and Financial Reconstruction (B.I.F.R.) has sanctioned the Revival scheme, a suggestion was put to both the sides that if the principal amount which is deposited in this Court is paid to respondent no.2 workman, the matter can be settled. It was also agreed that the interest amount which accrues on the principal amount of gratuity

would be foregone by the respondent no.2 workman.

6.1 Having considered the case on merits, it is directed that the order of the Controlling Authority under the Payment of Gratuity Act is accepted qua the principal amount which is deposited in this Court and is rejected with respect to the interest amount thereto. It is further directed that the principal amount which is deposited in this Court, be paid to the respondent no.2 workman, Vadilal Shamaldas Dave, after proper verification and identity. The payment of the above mentioned principal amount shall satisfy the full claim of the respondent no.2 workman. This order is passed looking to the peculiar facts and circumstances of the case and may not be treated to be a precedent in other cases. The petition stands disposed of accordingly. Rule is made absolute to the aforesaid extent. Interim relief granted earlier stands vacated.

(K. S. Jhaveri, J.)

pravin/